

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.658 of 2018

Prabhat Kumar Son of Sri Suresh Prasad, resident of Village P.S.- Govindpur,
District- Nawada.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The State Appellate Authority, Patna through its Chairperson.
5. The District Teachers Appointment Appellate Authority, Nawada, through its Presiding Officer.
6. The District Magistrate, Nawada.
7. The District Education Officer, Nawada.
8. The District Programme Officer, Establishment, Nawada.
9. The Block Development Officer, Block- Govindpur, District- Nawada.
10. The Block Education Officer, Block- Govindpur, District- Nawada.
11. The Selection Committee of Panchayat Raj, Budhawara, P.S.- Govindpur, District- Nawada through its Mukhiya
12. The Mukhiya, Panchayat Raj, Budhawara, P.S.- Govindpur, District- Nawada.
13. The Panchayat Secretary, Panchayati Raj, Budhawara, P.S. Govindpur, District- Nawada.
14. Sri Santosh Kumar, Son of Shri Brijnandan Prasad, resident of Village- Bishanpur, P.S.- Govindpur, District- Nawada.
15. Sri Nand Kumar, Son of Sri Sharda Prasad, resident of Village- Nandlal Bigha, P.S.- Akbarpur, District- Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Krishna Kant Singh, Adv.
For the State	:	Mr.Jitendra Kr. Roy No-1-Sc13
For respondent no. 14	:	Mr. Ajay Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

5 05-07-2022

1. Heard the parties.



2. The petitioner has been running from pillar to post for redressal of his grievance relating to consideration for appointment on the post of Panchayat Teacher for which he applied under the first phase of employment, 2006 under the Employment Rules, 2006.

3. The brief facts which required to be noticed are which is an admitted position are that in the proceedings conducted for selection process, for Panchayat Samiti, Budhwara Gram Panchayat under Govindpur Block, District-Nawada. The Selection Committee prepared a merit list of all applicants and conducted counselling. The appellant appeared and his documents were verified and he was placed at serial no. 12 in the merit list with 69.44% marks in B.C. category.

4. A waiting list was also prepared, wherein respondents were placed at serial nos. 2 and 3 having scored 67% and 66.77% marks respectively. Although, the petitioner was having higher merit marks and was in the main merit list, he was not offered employment and employment letter was not issued. In the proceedings which have come on record of the concerned Panchayat, it is noticed that on 30th November, 2007, the Panchayat in its meeting mentions that consent letter has been received of certain persons, who are in the waiting list and



it proceeds to recommend for their appointment and they are appointed namely respondents. There is no employment letter having been issued to the persons, who are in the main list, resulting in the petitioner not submitting any consent letter.

5. Initially, aggrieved of the aforesaid non-consideration, the petitioner preferred a writ petition before this Court, which came to be decided on 25th August, 2008, directing the petitioner to prefer a representation in terms of the Employment Rules, 2006. As per Rule 18 of the then existing Employment Rules, 2006, the petitioner ought to have approach the B.D.O. for preferring of a complaint against the selection process. However, he had preferred a writ petition. Thus once the High Court allowed the petitioner to file representation, he preferred a representation to the B.D.O.

6. In the meanwhile, it appears that Rule 18 of the Rules of 2006 was amended and the power to hear appeals was vested with the District Appellate Authority and, therefore, when the B.D.O. after examining representation held that the appointment offered to the respondents was illegal and the petitioner was entitled for appointment, the petitioner again had come to this Court for compliance of the order of the B.D.O. and at that time this Court considering the amended Rules held



the order passed by the B.D.O. as in nullity and again directed the petitioner to file appeal before the District Appellate Authority. The petitioner accordingly filed an appeal before the District Appellate Authority, the same was however, rejected vide its order dated 25th April, 2015. Aggrieved of the order of the District Appellate Authority, the petitioner again preferred writ petition before the High Court and this Court vide its order dated 08.03.2017 relegated the petitioner again to the State Appellate Authority as by that time the State Appellate Authority has come into force.

7. The State Appellate Authority vide its Judgment date 06.11.2017 noticed the aforesaid circumstances and then proceeded to relied on the resolution of the Panchayat, whereby the petitioner's name was not included in the list of candidate, who submitted consent letter. It also observed that the respondents were employed in the year 2007 itself and having working as Panchayat Teacher since then and have, therefore, acquired valuable right to work as Panchayat Teacher. In the circumstances, upheld the order of the Panchayat Employment Committee and hence, decline to interfere with the action.

8. Learned counsel appearing for the State fairly concedes that the petitioner was having higher merit than the



respondents and also does not deny the fact that consent is obtained after issuance of the employment letter. Candidates from the waiting list can be only issued employment letter after the candidates from the main list do not join. This is the procedure of selection being followed at all places. In the present case, this Court notices that the petitioner was never offered an employment and, therefore, there was no occasion to submit a consent letter. On the said premise, he, therefore, could not have been ousted from his valuable right of selection and appointment. At the same time, this Court finds that the Panchayat Employment Committee has acted in arbitrary manner and accepted the consent letters of those candidates who did not find place in the main merit list at all and were in the merit list. Such person who are in the waiting list do not have any right of employment and their rights only come into picture, once the candidates who are in the main list do not join.

9. In the present scenario, this Court find that there is no such fact which has come on record that the candidates from the main list did not join and in the illegal and arbitrary manner person with muchless in merit have been employed at the level of the Panchayat.

10. This Court notices a unique feature where the



Mukhiya and the Panchayat Secretary conduct selection of teachers. This Court takes notice of the fact that a Mukhiya is an elected person and is not required to have any educational qualification for participating in the election (during some period a person who was 8th Class passed was allowed to participate in the election). Even the Secretary Panchayat is only 8th Class passed which has now been enhanced to qualification of minimum 10th Class Pass.

11. Be that as it may, it is shocking and surprising that such persons should be allowed to conduct selection and appointment of teachers.

12. Be that as it may, in the present case, this Court finds that the power granted by the State Government to make selections/appointments on the post of Panchayat Teachers has been grossly misused by the members of the Panchayat Committee which included the Mukhiya and the Panchayat Secretary. Such appointments are also examined by the concerned District Programme Officer of the concerned District. Thus a responsibility lies on the concerned District Programme Officer to see that the selections are done fairly and in accordance with law.

13. This Court finds that the gross injustice has been



done with the petitioner, who was otherwise entitled to be appointed on the post of Panchayat Teacher way back in the year 2007 and has been fighting for his rights for almost 15 years.

14. The order passed by the District Appellate Authority dated 25.04.2015 and the order passed by the State Appellate Authority dated 06.11.2017 are found to be wholly perverse and are accordingly quashed and set aside.

15. Considering the aforesaid, this Court finds that the writ petition deserves to be allowed accordingly.

16. The petitioner would be entitled to be offered appointment from the date the respondents have been appointed and would also be entitled for continuity of service and fixation of salary. However, as he has not worked, the notional benefits for the entire period shall be granted to the petitioner and actual benefits shall be granted to him from the date of passing of the order dated 4th July, 2009 by the B.D.O., Govindpur Block as this Court finds that on factual grounds the order passed by the B.D.O. was correct and in accordance with law. The only aspect was that he had lost the authority to pass the said order. The benefit would, therefore, accrue to the petitioner from that date.



17. So far as the respondents are concerned, as they were not even in the main list. Their appointment is found to be wholly illegal and the same is cancelled.

18. The salary paid to the respondent nos. 14 and 15 shall be recovered from the Mukhiya, Panchayat Raj, Budhawara, Govindpur, Nawada and Panchayat Secretary, Panchayati Raj, Budhawara, Govindpur, Nawada (respondent nos. 12 & 13 respectively) and recovery should also be made from the District Programme Officer.

19. It is further observed that the District Programme Officer has also failed to perform his duty and in this regard, it is left for the Principal Secretary, Education to take appropriate action with respect to the Officers of the State.

20. The order is being passed for recovery, as the State Exchequer cannot be burdened with salary of two persons on the same post and the principle of accountability must be applied and persons who indulge in making such wrongful appointments must be dealt with severe and shaken.

21. Learned counsel appears for the respondents and supports the orders.

22. The writ petition is allowed accordingly.

23. The compliance be made positively within a



period of two months, failing which the petitioner would be free
to initiate contempt proceeding without further notice.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 16

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